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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,339	03/03/2004	Richard B. Klein	9399-3	4548
20792	7590	05/12/2008		
MYERS BIGEL, SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627			EXAMINER SCHLENTZ, NATHAN W	
			ART UNIT 1616	PAPER NUMBER
			MAIL DATE 05/12/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/792,339

**Applicant(s)**

KLEIN ET AL.

**Examiner**

Nathan W. Schlientz

**Art Unit**

1616

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 13 and 15-22 is/are allowed.
- 6) ☒ Claim(s) 7-9, 11, 12 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

Claims 1-6 have been cancelled in an amendment filed 29 October 2007. As a result, claims 7-22 are pending and are thus examined herein on the merits for patentability.

### ***Claim Objections***

Claim 8 is objected to because of the following informalities: the second line states, "an effective amount a composition". However, the examiner believes Applicants intended to state "an effective amount of a composition". Appropriate correction is required.

### ***Terminal Disclaimer***

The terminal disclaimers (TDs) filed on 29 October 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 7,220,761 and any patents granted on Application Numbers 10/792,465 and 11/745,111 have been reviewed and are accepted. The TDs have been recorded.

***Withdrawn Rejections***

The previous rejections not repeated within this office action are withdrawn by the examiner.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, claim 7 states, "wherein R<sub>5</sub> is an ultraviolet blocker, ultraviolet absorber or surfactant." However, it is not clear what substituents are being referred to when defining R<sub>5</sub> as an ultraviolet blocker, ultraviolet absorber or surfactant. UV blockers, UV absorbers and surfactants comprise a huge scope of compounds and compositions, and the specification does not teach a person skilled in the art what substituents at the R<sub>5</sub> position would constitute the UV blockers, UV absorbers and surfactants. The instant specification merely discloses UV blockers and UV absorbers that may be present within the microcapsule shell and surfactants that may be present within the composition, but does not provide any guidance with regard to what substituents at the R<sub>5</sub> position constitute UV blockers, UV absorbers and surfactants. Therefore, the scope of claim 7 is not clearly defined.

***Claim Rejections - 35 USC § 102***

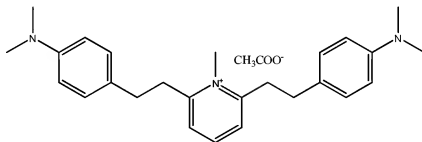
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 8, 9, 11, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Masao Onishi, Okayama Igakkai Zasshi, 1959, 71, 2313-2314 (Onishi).

Onishi discloses the influence of 14 sorts of photosensitizing dyes on the bacterial metabolism and respiration by means of warbug apparatus, wherein *Salmonella typhi* 57S and *Staphylococcus aureus* were used as the test organisms (pg. 2313, 1st paragraph). Onishi further discloses that NK 573 (2,6-bis-(p-dimethylamino-styryl)-pyridine-1-methyl acetate) (depicted below) showed very strong inhibition on the respiration of *Staph. aureus* (pg. 2314, paragraph No. 4).



***Allowable Subject Matter***

1. Claims 18-22 are allowable over the prior art.

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2. Claim 10, 13 and 15-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. The following is a statement of reasons for the indication of allowable subject matter: the compounds of the instant claims (i.e. stilbazium compounds) are known anthelmintics, as well as for killing bacteria. However, it was not known and it would not have been *prima facie* obvious to use the stilbazium compounds as agricultural antifungal agents.

#### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan W. Schlientz whose telephone number is 571-272-9924. The examiner can normally be reached on 8:30 AM to 5:00 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWS

/Johann R. Richter/  
Supervisory Patent Examiner, Art Unit 1616